

**United States Department of Labor  
Employees' Compensation Appeals Board**

M.R., Appellant	)	
	)	
and	)	<b>Docket No. 22-0038</b>
	)	<b>Issued: June 6, 2022</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Tampa, FL, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 11, 2021 appellant, through counsel, filed a timely appeal from a September 8, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a bilateral upper extremity condition causally related to the accepted factors of her federal employment.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On July 9, 2015 appellant, then a 50-year-old retired letter sorting machine (LSM) operator, manual clerk, and automation operator, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment. She noted that she first became aware of her claimed condition on July 25, 2013 and realized its relationship to her federal employment on April 15, 2015. On the reverse side of the claim form a supervisor advised that appellant retired on disability effective March 26, 2001. The official reported that appellant first notified her supervisor about her claimed injury on August 11, 2015.

In a June 16, 2015 statement, appellant asserted that her claimed bilateral upper extremity condition developed over years of working at the employing establishment. She reported that she first began having problems with her hands on July 25, 2013, but was not conclusively diagnosed with bilateral carpal tunnel syndrome until April 15, 2015. Appellant advised that her work duties as an LSM operator involved pushing/pulling heavy containers weighing approximately 600 pounds, removing trays from letter cages, dropping mail on a ledge, pulling mail down by reaching overhead, and bending down to place sleeves on mail trays. She also described her other work duties, which involved casing mail, moving containers, grasping handfuls of mail/magazines, bundling mail, filling mail trays, pushing/pulling cages, throwing bundles of magazines weighing 15 to 25 pounds into bins, and picking up and throwing sacks weighing in excess of 120 pounds. Appellant reported that she worked for the employing establishment for approximately 13 years and asserted that the repetitive use of her hands, wrists, arms, and fingers caused her bilateral upper extremity condition to develop over time.

Appellant submitted a March 26, 2001 notification of personnel action (PS Form 50), which indicated that her last day in active pay status was March 15, 1999 after which she went on disability retirement. She also submitted the findings of an April 16, 2015 electromyogram and nerve conduction velocity (EMG/NCV) study of her upper extremities, which revealed abnormal findings of delayed peak latency readings involving both median nerves. The results were deemed to be suggestive of bilateral carpal tunnel syndrome.

In an August 17, 2015 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

In response, the employing establishment submitted an August 27, 2015 statement in which appellant's former supervisor provided a description of appellant's work duties, which was similar to that provided by appellant in her June 16, 2015 statement.

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<sup>3</sup> Docket No. 18-0164 (issued May 23, 2018); Docket No. 19-1954 (issued March 1, 2021).

By decision dated September 24, 2015, OWCP denied appellant's claim, finding that it was untimely filed. On October 13, 2015 appellant, through counsel, requested reconsideration and, by decision dated July 1, 2016, OWCP denied modification of its September 24, 2015 decision. On June 23, 2017 appellant, through counsel, again requested reconsideration and, by decision dated August 18, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board and, by decision dated May 23, 2018,<sup>4</sup> the Board set aside the August 18, 2017 decision, finding that appellant had presented a new and relevant legal argument on reconsideration. The Board remanded the case to OWCP for a merit review to be followed by the issuance of an appropriate decision.

By decision dated August 14, 2018, OWCP modified its prior decision, finding that appellant had filed a timely occupational disease claim alleging a bilateral upper extremity injury and had established employment factors in the form of the repetitive motion required by her work duties. However, appellant's claim remained denied because she failed to submit a medical report relating a diagnosed condition to the accepted employment factors.

On July 29, 2019 appellant, through counsel, requested reconsideration of the August 14, 2018 decision. She submitted a November 27, 2018 report from Dr. Robert R. Reppy, an osteopath Board-certified in family medicine, who noted that she reported sustaining bilateral carpal tunnel syndrome due to years of repetitive keying on a mail sorting machine, casing mail, and pushing/pulling heavy equipment while working for the employing establishment. Dr. Reppy indicated that appellant had a positive Tinel's sign and negative Phalen's sign bilaterally, and diagnosed bilateral carpal tunnel syndrome.

In a January 28, 2019 report, Dr. Reppy provided findings for bilateral grip and pinch strength and diagnosed bilateral carpal tunnel syndrome. In a March 13, 2019 report, he opined that a February 6, 2019 EMG/NCV study revealed abnormal findings, including decreased amplitude signal of the right ulnar nerve and reduced conduction velocity of the left median nerve. Dr. Reppy again diagnosed bilateral carpal tunnel syndrome.

In a July 11, 2019 report, Dr. Reppy noted that, in July 2015, appellant filed an occupational disease claim, alleging that years of repetitive motion keying on an LSM, casing mail, and pushing/pulling heavy equipment had damaged her wrists and hands. He discussed appellant's upper extremity symptoms and indicated that she had no prior history of similar symptoms. Dr. Reppy noted, "The patient's injury was caused by her workplace while she was in performance of her duties at the [employing establishment], Tampa." He indicated that the repetitive nature of appellant's lifting, keying, and sorting tasks at work caused the damage to her median nerves over time. Dr. Reppy maintained that these tasks were a common and well-understood cause of carpal tunnel syndrome, noting that the medical literature was replete with similar cases. He referenced a medical journal abstract, which described carpal tunnel syndrome as arising from compression of the median nerve where it passed through the carpal tunnel in the wrist and as being characterized by sensory and, less commonly, motor symptoms and signs in the peripheral distribution of the median nerve. Dr. Reppy indicated that the medical literature concluded that there was evidence of positive association of carpal tunnel syndrome with work

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<sup>4</sup> Docket No. 18-0164 (issued May 23, 2018).

entailing highly repetitive or forceful movement of the hands. He noted, “Repetitive gripping is precisely the action required of appellant in her employment as [an LSM] operator, and she did it for years.” Dr. Reppy further advised that carpal tunnel syndrome was comprised of sensory and motor features in the median nerve distribution of the hand, including delayed nerve conduction and gradual onset of numbness/tingling and pain in that distribution. He indicated, “This exactly matches the symptomatology reported by this patient.”

By decision dated August 27, 2019, OWCP affirmed its August 14, 2018 decision as modified to reflect that appellant had submitted medical evidence addressing causal relationship to the claimed condition, but that it was insufficient to establish a bilateral upper extremity condition causally related to the accepted factors of her federal employment.

Appellant appealed to the Board and, by decision dated March 1, 2021,<sup>5</sup> the Board affirmed OWCP’s August 27, 2019 decision.

On June 15 2021 appellant, through counsel, requested reconsideration.

Appellant submitted an April 29, 2021 report in which Dr. Reppy indicated that, in July 2015, she alleged that years of repetitive motion keying on an LSM, casing mail, and pushing/pulling heavy equipment had damaged her wrists and hands. Dr. Reppy advised that appellant reported pain in her wrists and hands as well as loss of grip strength and noted that she had no prior history of similar symptoms. He maintained that appellant’s upper extremity condition “was caused by her workplace” while she was in performance of her duties. Dr. Reppy opined that the repetitive nature of appellant’s lifting, keying, and sorting tasks at work caused the damage to her median nerves over time. He discussed medical literature, which explained that there was evidence of positive association of carpal tunnel syndrome with work entailing highly repetitive/forceful movement of the hands and repetitive gripping. Dr. Reppy noted that repetitive gripping was the action required of appellant in her employment as an LSM operator for years. He indicated that conditions that decreased the carpal tunnel’s size, or swelled the structures in the tunnel, served to compress the median nerve against the transverse ligament bounding the tunnel’s roof. Dr. Reppy maintained that such circumstances could arise traumatically, as was the case for appellant. He advised that carpal tunnel syndrome was caused by extreme flexion/extension of the wrist, which increased the pressure in the carpal tunnel sufficiently to impair blood perfusion of the median nerve. Dr. Reppy found that the same mechanism applied in appellant’s case. He indicated that his opinion was “based on my medical experience, objective evidence, and my examination of the patient.”

Appellant submitted a report of May 3, 2021 EMG/NCV testing of her upper extremities. She also submitted photographs of her former workplace and further descriptions of her work duties.

By decision dated September 8, 2021, OWCP denied modification of its prior decision, finding that appellant did not submit sufficient medical evidence to establish a bilateral upper extremity condition causally related to the accepted factors of her federal employment.

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<sup>5</sup> Docket No. 19-1954 (issued March 1, 2021).

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>9</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>10</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>11</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>12</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a bilateral upper extremity condition causally related to the accepted factors of her federal employment.

The Board preliminarily notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's August 27, 2019 decision, which was considered by the Board in its March 1, 2021 decision, which affirmed OWCP's denial of appellant's claim.

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>8</sup> *E.S.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also* *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *W.M.*, Docket No. 14-1853 (issued May 13, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>12</sup> *Id.*; *Victor J. Woodhams*, *supra* note 9.

Findings made in prior Board decisions are *res judicata* and cannot be considered absent further merit review by OWCP under section 8128 of FECA.<sup>13</sup>

Appellant submitted an April 29, 2021 report in which Dr. Reppy indicated that, in July 2015, appellant alleged that years of repetitive motion keying on an LSM, casing mail, and pushing/pulling heavy equipment had damaged her wrists and hands. Dr. Reppy maintained that appellant's upper extremity condition "was caused by her workplace" while she was in the performance of her duties. He opined that the repetitive nature of appellant's lifting, keying, and sorting tasks at work caused the damage to her median nerves over time. Dr. Reppy discussed medical literature, which explained that there was evidence of positive association of carpal tunnel syndrome with work entailing highly repetitive/forceful movement of the hands and repetitive gripping. He noted that repetitive gripping was the action required of appellant in her employment as an LSM operator for years. Dr. Reppy indicated that conditions that decreased the carpal tunnel's size, or swelled the structures in the tunnel, served to compress the median nerve against the transverse ligament bounding the tunnel's roof. He maintained that such circumstances could arise traumatically, as was the case for appellant. Dr. Reppy advised that carpal tunnel syndrome was caused by extreme flexion/extension of the wrist, which increased the pressure in the carpal tunnel sufficiently to impair blood perfusion of the median nerve. He found that the same mechanism applied in appellant's case.

The Board finds that Dr. Reppy's April 29, 2021 report is of limited probative value with respect to appellant's claim for an employment-related upper extremity condition. Dr. Reppy did not describe appellant's work duties in detail or provide adequate medical rationale in support of his opinion that appellant's work duties caused bilateral carpal tunnel syndrome. Although he noted that appellant engaged in such activities as grasping and lifting mail, Dr. Reppy did not provide sufficient detail regarding the frequency she performed such duties over the years she worked for the employing establishment. He referenced medical literature of general application regarding carpal tunnel syndrome, but he did not adequately describe the medical mechanism for an upper extremity injury in appellant's specific case. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.<sup>14</sup> Therefore, Dr. Reppy's April 29, 2021 report is insufficient to establish appellant's claim.

Appellant also submitted the findings of May 3, 2021 EMG/NCV testing of her upper extremities. However, diagnostic studies lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition.<sup>15</sup>

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<sup>13</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

<sup>14</sup> *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>15</sup> *C.S.*, Docket No. 19-1279 (issued December 30, 2019). Appellant also submitted photographs of her former workplace and further descriptions of her work duties. However, this evidence is not relevant as the underlying issue in this case is medical in nature.

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed conditions and the accepted factors of her federal employment, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a bilateral upper extremity condition causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board